Supreme Court, U.S.
FILED

No. 01-1756 MAY 29 2002

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IN THE

Supreme Court of the United States

EDWARD LEROY SWINDELL,
and others of similar circumstances,

Petitioner,

—v.—

FLORIDA EAST COAST RAILWAY COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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77 pgs

QUESTIONS PRESENTED FOR REVIEW

1. Whether the District and Circuit Court in the 11th Circuit have incorrectly failed to apply in this case the requirements of Rule 56 of the Federal Rules of Civil Procedure that a *pro se* litigant have actual notice of the requirements of Rule 56 before a summary judgment can be entered against him as demanded in a decision by the U.S. 2nd Circuit Court of Appeals and whether the failure by the 11th Circuit to establish a *PRO SE* office or officers in contrast to the 2nd Circuit and others is inherently detrimental to a *pro se* litigant's rights.

2. Whether the District and Circuit Courts have misconstrued the express will of Congress in applying a statute of limitations delineated in a statute requiring proof of negligence, the *Federal Employees Liability Act*, to two acts, *Safety Appliance Act* and *Boiler Inspection Act*, which rely on negligence *per se* and expressly omit a statute of limitations.

3. Whether the lower courts have misapplied the Discovery Rule and the rule expressed in *Urie v. Thompson*, regarding petitioner's second injury of emotional distress by employing a "Point of Time" standard rather than a "Period of Time" and consequently ruled on a matter of fact more appropriately left to the decision by a jury and whether the lower Court has denied the Petitioner justice by usurping the role of the jury as a trier of fact.

4. Whether the State Court of Florida erred in entering a judgment against the petitioner that was presented in the name of another and was filed with no notice to the petitioner who was not able to contest it and consequently was denied due process.

PARTIES TO THE PROCEEDINGS

The petitioner in this Court is Edward LeRoy Swindell, a resident of the State of New York, who was an employee of the respondent and is bringing the present action on a *pro se* basis. There are additional former employees as listed in the Appendix hereto who may join in the action if the writ is successful and the action is remanded for trial. The respondent in this action is the Florida East Coast Railway Company who was the employer of the petitioner. The parent of the petitioner and the various subsidiaries are listed as follows:

Parent: Florida East Coast Industries, Inc.

Subsidiaries:

Florida East Coast Railway Company
Florida East Coast Highway Dispatch Company
Florida East Coast Inspections, Inc.
Florida East Coast Deliveries, Inc.
Railroad Concrete Crosstie Corporation
Railroad Track Construction Company
Operations Unlimited, Inc.
Florida Express Carrier, Inc.
Gran Central Corporation
Dade County Land Holding Company, Inc.
International Transit, Inc.

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STATEMENT OF BASIS FOR JURISDICTION

Jurisdiction for the petition for certiorari is based on the following:

1. Judgment US Court of Appeals, Eleventh Circuit entered and filed January 2, 2002.
2. Petition for Rehearing and Petition for Rehearing en banc (Rule 35, Federal Rules of Appellate Procedure) denied March 7, 2002.
3. The basis for jurisdiction in the District and Circuit Courts was predicated upon diversity of citizenship and violation of the following acts and laws of the United States:
    a. Safety Appliance Act, 45 USC Sec. 1-16 et seq.
    b. Boiler Inspection Act, 45 USC Sec. 22-34 et seq.
    c. Federal Employers Liability Act, 45 USC Sec. 51 et seq.
    d. Fifth and Fourteenth Amendment to the U,S. Constitution.
    e. Federal Rules of Civil Procedure, Rule 56, 28 U.S.C.A.
    f. 49 CFR Ch 11, Sec. 229.5 (m).

FEDERAL STATUTES, RULES, CONSTITUTIONAL PROVISIONS

Boiler Inspection Act. 45 USC Sec 22-34 et seq.

Federal Employers Liability Act, 45 USC Sec 51 et seq.

Fifth and Fourteenth Amendment, U.S. Constitution

Fed. Rules Civ. Proc., Rule 56, 28 USCA

49 CFR Ch 11, Sec. 229.5(m)

STATEMENT OF THE CASE, FACTS AND BASIS FOR FEDERAL JURISDICTION

Petitioner was employed by the defendant Florida East Coast Railway from January, 1939, until 1952, first as a laborer, January, 1939 to May, 1939, then as an apprentice, May, 1939 to 1943, and finally as an electrician and Diesel Locomotive Attendant from 1943 to 1952. He worked on steam and diesel locomotive overhaul and repair shops in St. Augustine and Miami, Florida as a laborer and later as an electrician and on "Line of Road" as a Diesel Locomotive attendant on trains that traveled between Miami and New York. As more fully described in the Appendix hereto, Mr. Swindell's duties required him to handle and be in close proximity to asbestos debris, dust and other toxic substances which permeated the repair shops and also were emitted by defective parts, such as ball cocks and cut-off steam valves, on the locomotives while in motion on-line-of-road.

No protective gear, such as masks or respirators, was issued to, or required to be worn in the shops by, other than the painters, who were universally white. The laborers and helpers, whose main function was in tearing the asbestos coating off of the locomotives so the boiler makers and machinists could effectuate needed repairs, were predominately African-American.

As a result of his constant exposure to asbestos fibers and dust, the Petitioner contracted asbestosis and was so diagnosed in 1994, by means of a cat scan. On March 16, 1996, Petitioner filed an action in Florida state court solely under the provisions of the *Federal Employers Liability Act* for negligent infliction of asbestosis. Prior to trial, Petitioner withdrew his action on June 11, 1998 "without prejudice" at the judge's request due to a verdict in another action in the Florida state court, *Osborne v. FEC,* which, incorrectly, absolved the railroad under FELA because of lack of foreseeability of asbestos harm and lack of knowledge, completely disregarding the common law duty of master to servant to provide him with safe material with which to work in a safe environment in which to work.

Shortly after the dismissal, Petitioner on September 11, 1998, filed in U.S. District Court, Southern District, New York, his legal state of residence for 45 years, an action under the Safety Appliance Act, the Boiler Inspection Act and the Federal Employer's Liability Act for damages resulting from contracting asbestosis and resultant emotional distress, a second injury which had arisen and become evident with a diagnosis of acute depression in April, 1997.

On March 26, 1999, the Judge in the New York District Court ruled that venue jurisdiction was not established for the defendant in New York and dismissed the action without prejudice to the petitioner seeking redress in an appropriate jurisdiction. This ruling was upheld on appeal in the Court of Appeals, Second Circuit on December 23, 1999.

On February 25, 2000, as early as practicable, the petitioner filed an action in the U.S. District Court in Jacksonville, Florida under the provisions of the Safety Appliance Act, the Boiler Inspection Act and the Federal

Employer's Liability Act for damages for injuries suffered from asbestosis, plus a second injury of emotional distress for acute depression which was diagnosed in April, 1997, after undergoing a seizure and hospitalization, and a separate count of abuse of process resulting from defendant's filing of a judgment without notice against the petitioner for unexplained charges in the state suit.

On March 30, 2001, the judge in the Florida District Court entered a summary judgment against the Petitioner on the basis that the action for the two injuries was time barred and that the cause of action for abuse of process was barred because of *res judicata* and could only be decided by the Supreme Court.

Petitioner appealed on the basis that there were no statute of limitations desired or delineated in the Safety Appliance Act or Boiler Inspection Act and, even if so, the statute was tolled under the first injury and that the onset of the second injury was within any limitation requirements, since the action in Florida was filed within three years of the onset of the second injury. The petitioner also raised the issue that there were facts involved, such as the date of knowledge of the onset of the second injury, better left to the determination of a jury. The judge's ruling was upheld on appeal and request for rehearing and rehearing *en banc* were denied on March 7, 2002.

ARGUMENTS

1.

THERE IS A DIFFERENCE IN INTERPRETATION OF THE REQUIREMENTS OF RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE BETWEEN THE 2ND CIRCUIT AND THE 11TH CIRCUIT AS TO THE REQUIREMENT THAT A *PRO SE* LITIGANT HAVE *ACTUAL NOTICE* OF REQUIREMENTS OF RULE 56 BEFORE A SUMMARY JUDGMENT CAN BE ENTERED AGAINST HIM. AS A CONSEQUENCE OF THE 11TH CIRCUIT'S FAILURE TO PROVIDE SUCH NOTICE, PETITIONER HAS BEEN DENIED DUE PROCESS AND HIS RIGHTS UNDER THE AFORESAID RULE.

It is the contention of the Petitioner Pro Se that the Eleventh Circuit has violated the requirements of Rule 56 of the Federal Rules of Civil Procedure that a *pro se* litigant must have *actual notice* of the requirements of Rule 56 before a summary judgment can be entered against him.

The requirement of notice is clearly stated in *Irby v. NYC Transit Authority*, Docket No. 00-9421, August 22, 2001, U.S. Court of Appeals, 2nd Circuit,: "We take this opportunity to remind district courts and litigants who move for summary judgment against *pro se* litigants that the failure to provide the *pro se* party with notice of the requirements of Rule 56 of the Federal Rules of Civil Procedure, and the consequences of noncompliance therewith, will result in *vacatur* of the summary judgment, no matter how meritorious."

The failure to provide notice in the present case had an immediate and deleterious effect upon the Petitioner

since he was unable to show proof of the time of occurrence of the "Second Injury" in the present action to counter the decision stating that time had run out under the statute of limitations. Failure to provide actual notice of the requirements of Rule 56 is fatal to the summary judgment decision and ruling.

It is further contended that the failure of the Eleventh Circuit to provide *pro se* litigants with access to a *pro se* office or officers such as is the case in other Circuits such as the Second Circuit is in violation of said Rule 56 and is a violation of due process and equal protection under the laws of the United States.

The Petitioner was not aware of what was required to show that the Second Injury relative to emotional distress did not occur until his hospitalization and diagnosis of *acute depresssion*. Although the judge referred to the Petitioner Pro Se suffering "mental anguish and extreme nervousness over the prospects of developing cancer" in the complaint in the state case in Florida, the petitioner was cleared of any emotional disturbance at examination by his own physician and those of the defendant prior to trial. To hold the Petitioner responsible for knowing or "should have known" he had an illness when he was cleared by two physicians is requiring more of a layman than can be expected. The judge in this case placed himself in the position of making a medical diagnosis in contravention of two medical professionals. That is a decision he is not qualified to make. It is doubtful that 'mental anguish' can stand alone as a "second injury". At the least this was an arguable fact and a genuine issue of material fact that should have been allowed to be presented, and should have been presented, to a jury for resolution. *Cronin v. Aetna Life Ims. Co.*, 46 F. 3d 196 (2d Cir. 1995). On a motion for summary judgment, a court "cannot try issues of fact; it can

only determine whether there are issues to be tried." *Donahue v. Windsor Locks Bd. of Fire Comm'rs*, 834 F.2d 54, 58 (2d Cir. 1987).

An appeals court is required to construe all facts and inferences drawn from them in the light most favorable to the non-movant party. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.; *Sledge v. Goodyear Dunlop Tires North America, Ltd.*, slip p. 977, 275 F.3d 1014 (2001); *Cofield v. Goldkist, Inc.*, slip p. 238, 267 F.3d 1264 (2001); *Gerling Global Reinsurance Corp. of America v. Gallagher*, slip p.163, 267 F3d 1228 (2001); *Pipkins v. City of Temple Terrace, Fla.*, slip p.138, 267 F3d 1197 (2001); *DeJulio v, Georgia*, slip p. 1072, 276 F.3d 1244. (2001). In this case the courts have failed to follow their own precedents and indeed appear to have gone out of their way to deny the Petitioner justice, perhaps because of the nature of his illness.

2.

THE LOWER COURTS HAVE MISCONSTRUED THE EXPRESS WILL OF CONGRESS IN APPLYING A STATUTE OF LIMITATIONS DELINEATED IN A STATUTE REQUIRING PROOF OF NEGLIGENCE, *THE FEDERAL EMPLOYERS LIABILITY ACT*, TO TWO STATUTES, *SAFETY APPLIANCE ACT* AND *BOILER INSPECTION ACT*, WHICH RELY ON *NEGLIGENCE PER SE* AND EXPRESSLY OMIT A STATUTE OF LIMITATIONS.

Although Petitioner brought the original action in Florida state court solely under the act first listed below (FELA), Petitioner brought the action in the Federal courts under three separate Acts of Congress:

Federal Employers Liability Act

Safety Appliance Act

Boiler Inspection Act

In only one of the Acts, the Federal Employers Liability Act, did Congress specify a statute of limitation period, yet lower Courts have often attempted to assign the three year period in FELA to the other two acts on an *ex post facto* basis. It is Petitioner's contention that this assignation is incorrect and contrary to the will of Congress and public policy. FELA requires proof of negligence and it is reasonable to assume that recollections and potential proofs could erode over time, so time limitation is necessary to protect potential defendants. However, both the Safety Appliance Act and the Boiler Inspection Act specifically deal with *negligence per se*. In violations of those acts, it is the injury that defines the tort, regardless of intent.

Consequently, a statute of limitations plays no part and should have no effect. After careful review of cases brought under it and its provisions, Justice Black clearly stated that the Safety Appliance Act contains no statute of limitations. *Herb v. Pitcairn*, 324 U.S. 117 (1945). In cases brought solely under the SAA, there is no discussion of or imposition of a statute of limitations.

It is clear by looking at the dates of adoption of the three Acts in question that had Congress wished to apply the statute of limitations contained in FELA to the other two Acts, or any statute at all, there was certainly time and opportunity to do so when it amended the statutes. But the fact is that Congress did not and the courts should not usurp Congress's prerogatives and authority.

> "Courts must presume that a legislature says in a statute what it means and means in a statute what it

says there." *Florida East Coast Ry. Co. v. City of West Palm Beach*, slip p. 65, 266 F.3d 1324 (2001). See also, *Burton v. Tampa Housing Authority*, slip p. 639, 271 F.3d 1274 (2001).

Congress' refusal to include a built-in limitation period does not require a court to borrow or impose one, nor should a court break with historic principles of equity in the enforcement of federally-created equitable rights. see *Holmberg v. Ambrecht*, 327 U.S. 392 (1946); *Auto Workes v. Hoosie Corp.*, 387 U.S. 696 (1966).

"Statute of limitations are designed to insure fairness to defendants by preventing the revival of stale claims in which the defense is hampered by lost evidence, faded memories and disappearing witnesses, and to avoid unfair surprise." *Johnson v. Railway Express Agency, Inc. ET AL*, 421 U.S. 454 (1975). None of these elements are present in this action and the defendants should be estopped from utilizing this defense to shield them from atoning for their malfeasance. The Petitioner has been attempting to bring this action on a steady basis since 1996. The defendant "had notice from the beginning that plaintiff was trying to enforce a claim against it" *Tiller v. Atlantic Coast R.R. Co.*, 323 U.S. 574 (1945). There is no surprise here, no fading of memories, no lost evidence, no disappearing witnesses, no need to protect the defendant. If Congress had desired a statute, they could have inserted one during the past century. Courts should resist the temptation to second guess Congressional intent. See *Iraola & CIA,S.A. v. Kimberly-Clark Corp.*, slip p. 505, 323 F3d 854. After all, there are in the present era methods of communication that were not available in timely fashion years ago.

Clearly, there is no evidence that Congress intended to expand the three year statute of limitations set forth in

FELA to the other acts. The statutes have separate purposes and are to remediate separate wrongs. Lower Courts that have ruled otherwise are directly acting contrary to the will of Congress. The lower Courts in this case have erred and the summary judgment must be vacated.

3.

WHETHER THE LOWER COURTS IN THIS ACTION HAVE MISAPPLIED THE DISCOVERY RULE IN ASSESSING THE COMMENCEMENT OF PETITIONER'S INJURIES.

The lower courts also have erred in failing to correctly apply the rule expressed in *Urie v. Thompson*, 337 U.S. 1263 (1949), that injuries related to asbestos exposure "are the product of a period of time rather than a point of time; consequently the afflicted employee can be held to be "injured" only when the accumulated effects of the deleterious substance manifest themselves."

The consequence of this failure to apply the Urie rule and the Discovery Rule whose purpose is to exclude the period of time during which the injured party is reasonably unaware that an injury has been sustained, *Dalrymple v. Brown*, 7101 A.2d. 164, 167 (Pa. 1997), was to deny the Petitioner his rights under the *second injury* of emotional distress. While obviously the knowledge that one is suffering from asbestosis can raise concerns, anxiety and worries concerning the possibility of contracting cancer or other calamitous illnesses, not until the second injury can stand on its own can an individual bring an action for redress. *Metro-North Commuter Railroad v. Buckley*, 521 U.S. 424 (1997). The statute of limitations for a second injury commences when there exists an enforceable claim. *Sopha v. Owens-Corning Fiber-*

glass Corp., 98-1343 Sup. Ct. Wisc. (2000); *Pritzlaff v. Archdiocess of Milwaukee,* 194 Wis. 2d 302, 315, 533 N.W. 2d 780 (1995). The knowledge of the injury must be on the basis of *objective facts. Probate Estate of Raymond Krause et al. v. Shell Oil Co., et al.* Case No. 96-CV-72144-DT, 1/30/98, and the plaintiff must be aware that an actionable injury has been sustained. *Murphy v. Saavedra & Meadville Medical Center,* Supreme Ct. of Pennsylvania, Western District, PA. Appelate Ct. 2/16/2000. The second injury must be one capable of standing alone as a cause of action, *Sopha v. Owens-Corning Fiberglass Corp., supra.* If both his own and defendant's expert witnesses found no evidence of a second injury at the time of bringing the original suit, it is unreasonable for the judge in this case to find such "evidence" and punish the petitioner for not discovering what experts could not. It was clearly a *second* injury when the petitioner had a seizure and as a result was hospitalized. In any event, it would be a jury question.

Note also that under 49 CFR Ch 11 Sec. 229.5 (m), defining a serious injury under the Safety Appliance Act, the Boiler Inspection Act and ICC rules, under which Petitioner was required to work:

> "Serious injury means an injury that results in amputation of any appendage, the loss of sight in an eye, the fracture of a bone, or *confinement in a hospital for a period of more than 24 consecutive hours,*" (emphasis added)

If physicians relied upon by the defendant in this case as well as the Petitioner's own found no evidence of the second injury of emotional distress at the point of time of bringing the original suit in Florida, then it is farfetched for the Courts below to hold the Petitioner to a higher standard of expertise than professionals. It was

not until later, after a seizure, *hospitalization* and diagnosis by a psychiatrist in April, 1997, that the Petitioner became aware of a second injury and thereafter sought redress, well within the time limit required under FELA.

It is thus somewhat absurd for the lower courts to hold that cause of action accrued for the second injury involving emotional distress at commencement of the suit in the Florida State court when proof was offered in the record through both the Petitioner's medical experts and, more importantly, those of the defendant's who examined him that he was not suffering from an emotional injury, let alone one that could stand on its own for recovery. There is no conceivable way that someone could be expected to or should know of an injury if the evident facts known at that time are that he is not injured. The courts below were clearly bringing Alice in Wonderland logic to the case in order to deprive Petitioner of his rights. The second injury only grew and manifested itself on April 16, 1997, when Petitioner was hospitalized and diagnosed with having acute depression and that is when the FELA statute of limitations should have started to run in this action. Regardless, at the very least, this was an issue of fact best left to a jury to decide. *Tullius v. Albright,* slip p. 1364, 240 F3d 1317 (2001).

It must also be pointed out that the purposes of the acts under which this action has been brought are "humane and remedial", *Burnett v. New York Central R. Co.*, 380 U.S. 424 (1965), and actions should be construed in a light most favorable to the aggrieved. The courts below appear to have ignored this and instead have construed events in a manner most favorable to the wrongdoer.

The requirement for reasonable diligence under the Discovery Rule, as defined under *Sopha v. Owens-Corn-*

ing Fiberglass Corp., supra, is only applicable under *negligence* cases. *Salinas v. Gary Pools, Inc.,* SW erd, 2000, WL 1344509 (4th Court of Appeals-San Antonio, TX, September 20, 2000). As neither the SAA nor the BIA requires proof of negligence, the only test for petitioner was if he had *actually known* of the existence of this acute depression. The lower courts have ignored in the present action the generally accepted concept even within their own jurisdiction that the onset of a second injury is a genuine and material question of fact and should be left to a jury for determination. *Michael v. Norfolk Southern Railway Company*, U.S.C.A, 11th Cir. No. 94-9373-94-9374 (Feb. 6, 1996); *Augusta Iron and Steel Works, Inc. v. Employers Insurance of Wausau*, 835 F.2d 855, 856 (11th Cir 1988). "The point at which the complaining party should reasonably be aware that he has suffered an injury is generally an issue of fact to be determined by the jury". *Hayward v. Medical Center of Beaver County,* 608 A.2d 1040 (Pa. 1992). "When the disease manifested itself was a question of fact not subject to resolution by summary judgment" *Celotex Corp. v. Copeland*, 471 So.2d 533, 539 (Fla. 1985); *Copeland v. Armstrong Cork Co.*, 447 So.2d 926 (Fla. 3d 1984).

4.

WHETHER THE PETITIONER WAS DENIED DUE PROCESS BY THE FLORIDA STATE COURT BY ITS ACCEPTING A JUDGMENT FOR FILING WITHOUT NOTICE TO THE PETITIONER AND WHETHER THIS WAS ABUSE OF PROCESS ON THE PART OF THE DEFENDANT ENTITLING PETITIONER TO REDRESS.

The Petitioner has attempted to argue under COUNT II of his cause of action that the filing of a judgment for costs by the defendant in the State Court of Florida was both a violation of due process and an abuse of process and that the defendant's actions brought it within the reach of this action and it is part of the action.

Petitioner received a notice addressed to an African-American claimant in another separate action against the defendant that the defendant was intending to levy costs against that person. Since it was the Petitioner's understanding that he had voluntarily dismissed his own action against the defendant under an agreement that each party would bear its own costs, there was no reason for him to think that this notice affected him in any way. This was the last that Petitioner knew of the matter until he was in Judge's chambers in White Plains, N.Y. at a pretrial hearing in September, 1998. At that time, the defendant's attorney offered to settle the case Petitioner was attempting to bring in return for vacating a judgment in Florida that the Petitioner later learned had been filed a few days after he had filed his action in the New York District Court.

The District Court judge in the 11th Circuit held that the use of the name of a party in another action altogether was not critical, but rather, inadvertent and a clerical error. This is the same judge who made a point of

warning the parties that he expected accuracy in pleadings. Putting the name of a party in a separate action on the heading of a notice to a party in another action is certainly of importance and more than a mere clerical error, at least as to proof of notice.

There is no knowledge as to how this notice issued in the name of one person transformed itself into a judgment directed against the petitioner without his knowing it, Something had to be filed with his name on it, but no notice was sent, given or received. This is more than a clerical error and inadvertence and the Petitioner should have the right to discover what occurred. The Petitioner's name has been sullied, his credit has been jeopardized and his rights have been tossed aside with a manifest lack of concern.

Indeed, it appears that the defendant delayed filing the judgment and appeared to use this "judgment" in a manner and attempt to dissuade the Petitioner from seeking justice. This action on the part of the defendant is a clear *prima facie* case of violation of due process and demonstrably a flagrant abuse of process. See, *Handbook of The Law of Torts,* William L. Prosser, Third Edition, 1964, Sec. 115 Abuse of Process, pp. 876-878: *Coplea v. Bybee,* 290 Ill.App. 117,8N.E. 2d 55 (1937); *Glidewell v. Murray-Lacey & Co.*, 124 Va. 563.98 S.E. 665, 4 A.L.R. 225 (1919); *Kool v. Lee*, 43 Utah 394, 134 P. 906 (1913). Petitioner has been damaged not only financially, but his credit rating and standing have been affected to a major degree *Gore v. Gorman's, Inc.*, W.D. Mo. 1956, 148 F.Supp.241.

SUMMARY

In summary, Petitioner prays for consideration of this petition for writ of certiorari for reasons of justice and because:

1. The decision in this case is in direct conflict with a decision rendered in the Second Circuit Court of Appeals as to the treatment of *PRO SE* litigants under Rule 56 of the Federal Rules of Civil Procedure and represents a flagrant denial of due process and strips protection specifically designed for the pro se litigant.

2. The courts in this action have made a decision regarding judicial review and disregard of congressional intent contrary to the U.S. Constitution and previous decisions of this Court and other jurisdictions and have usurped the power of the Congress.

3. The lower courts have decided an important question regarding onset of injury and imposition of summary judgment when there remains questions of fact in contradiction of long established federal law and decisions of this Court and others that would seriously affect the rights of the injured to receive justice for wrongs received.

4. This Court is the primary review of abuse of process of a state court which has harmed the Petitioner greatly.

5. Petitioner was misled by the judge in the district court and suffered great cost because of the judge advising the parties that he felt the case could be settled and scheduling a hearing before a mediator shortly before pre-trial, only to rule on the respondent's motion for summary

judgment nearly one year after it was submitted. This adversely affected petitioner as he had to contract with expert witnesses and undergo other expenses in preparation for trial.

Respectfully submitted,

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